(31)

No. 95-974

Supreme Court, U.S.
FILED
JUL 26 1996
CLERK

In The

Supreme Court of the United States

October Term, 1995

ARIZONANS FOR OFFICIAL ENGLISH
AND ROBERT D. PARK,

Petitioners,

v.

STATE OF ARIZONA; MARIA-KELLY F. YNIGUEZ;
JAMES P. GUTIERREZ; and ARIZONANS AGAINST
CONSTITUTIONAL TAMPERING,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE OF HAWAII CIVIL RIGHTS COMMISSION, NATIVE HAWAIIAN LEGAL CORPORATION, NA LOIO NO NA KANAKA AND NATIVE HAWAIIAN ADVISORY COUNCIL IN SUPPORT OF AFFIRMING THE JUDGMENT

Counsel of Record:

* John H. Ishihara
Hawaii Civil Rights Commission
888 Mililani St., 2nd Floor
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636

* Paul F. N. Lucas
* Carl C. Christensen
Native Hawaiian Legal Corporation
1164 Bishop Street
Suite 1205
Honolulu, Hawai'i 96813
Telephone: (808) 521-2302

William D. Hoshijo
* Eric K. Yamamoto
Na Loio No Na Kanaka
810 N. Vineyard Boulevard
Honolulu, Hawai'i 96813
Telephone: (808) 847-8828

* Eric K. Yamamoto
Native Hawaiian Advisory Council
1088 Bishop Street
Suite 1204
Honolulu, Hawai'i 96813
Telephone: (808) 523-1445

Attorneys for Amici Curiae

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

40pp

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF AFFIRMING THE JUDGMENT BELOW

Pursuant to Supreme Court Rule 37, the Hawai'i Civil Rights Commission, the Native Hawaiian Legal Corporation, Nā Loio No Nā Kānaka, and the Native Hawaiian Advisory Council (hereinafter collectively referred to as "Amici"), by and through their undersigned attorneys, respectfully move this Court for leave to file a brief *amici curiae* in support of affirming the judgment below. In support of its motion, Amici state as follows:

1. Amici seek to support the arguments made in Respondents' brief. Each of the Amici has special expertise in the treatment of Hawaiian and other indigenous languages, as well as immigrant community languages, as shown in the Interest of Amici Curiae, attached to their Brief of Amici Curiae. Amici can provide information about Hawai'i's historical experience with language policy, which will assist this Court in the consideration and disposition of the issues raised in this case.

2. Pursuant to Rule 37.3, written consent to file this Amici Curiae has been obtained from Petitioners and Respondent Maria-Kelly Yniguez. Amici have not received written consent from all of the Respondents but believe that they will not object to the filing of this Amici.

Wherefore, it is respectfully requested that this Court issue an order granting Amici leave to file the attached Brief of *Amici Curiae* in support of Respondents.

Respectfully submitted,

* JOHN H. ISHIHARA
HAWAII CIVIL RIGHTS COMMISSION
888 Mililani St., 2nd Floor
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636

* PAUL F. N. LUCAS

* CARL C. CHRISTENSEN
NATIVE HAWAIIAN LEGAL CORPORATION
1164 Bishop Street
Suite 1205
Honolulu, Hawai'i 96813
Telephone: (808) 521-2302

WILLIAM D. HOSHIJO

* ERIC K. YAMAMOTO
NA LOIO NO NA KANAKA
810 N. Vineyard Boulevard
Honolulu, Hawai'i 96813
Telephone: (808) 847-8828

* ERIC K. YAMAMOTO
NATIVE HAWAIIAN ADVISORY COUNCIL
1088 Bishop Street
Suite 1204
Honolulu, Hawai'i 96813
Telephone: (808) 523-1445

Counsel of Record for
Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES CITED iii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. PETITIONER HAS IMPROPERLY CHARACTERIZED THE ARTICLE 28 ENGLISH ONLY CONTROVERSY AS UNITY VERSUS BALKANIZATION; RATHER, THE PROPER DESCRIPTION IS CULTURAL/RACIAL NEGATION VERSUS MULTICULTURAL DEMOCRACY 5

II. FALSELY CAST IN TERMS OF ASSIMILATION AND SOCIETAL UNITY, EARLY EXCLUSIONARY LANGUAGE POLICY IN HAWAI'I REFLECTED DIFFERENTIATION AND DENIGRATION OF HAWAIIAN CULTURE AS A MEANS FOR EXCLUDING HAWAIIANS FROM THE POLITY 11

A. Post-Western Contact Through the Overthrow of the Hawaiian Constitutional Monarchy (1776-1893): Cultural Disfavor 11

B. Between the Overthrow and Statehood (1893-1959): Cultural Negation 13

III. THE CULTURAL DESTRUCTION ACCOMPANYING HAWAI'I'S ENGLISH ONLY LANGUAGE POLICY CONTRIBUTED TO THE SUBORDINATION OF HAWAIIANS, BRED LONG-TERM POLITICAL RESISTANCE WHICH ULTIMATELY FOSTERED OFFICIAL MULTILINGUALISM 18

TABLE OF CONTENTS – Continued

Page

A. The Impact of Restrictive Language Policies 18

B. Resistance and Reemergence 20

IV. THE SOCIAL VALUE OF MULTILINGUALISM TO A MULTICULTURAL DEMOCRACY 23

V. RECOGNIZING AND PROMOTING DIVERSITY AND PLURALISM IS AN EMERGING TREND IN INTERNATIONAL LAW, PARTICULARLY WITH RESPECT TO THE PRESERVATION OF LANGUAGE AS A FOUNDATIONAL ELEMENT OF CULTURE 26

CONCLUSION 28

TABLE OF AUTHORITIES

Page

CASES

Farrington v. Tokushige, 273 U.S. 284 (1927) 17

Yniguez v. Arizonans For Official English, 69 F.3d 920 (9th Cir. 1995), *cert. granted*, ___ U.S. ___ (1996) (No. 95-974) 7

FEDERAL STATUTES

Foreign Language Assistance Act of 1988, Pub. L. No. 100-418, 102 Stat. 1476 (1988) 25

National Defense Education Act of 1958. Pub. L. No. 85-864, 72 Stat. 1581 (1958) 25

HAWAII STATE CONSTITUTION

Haw. Const., art. I, § 5 1

Haw. Const., art. X, § 4 21

Haw. Const., art. XIV, § 4 21

CONSTITUTIONAL CONVENTION MATERIALS

Committee of the Whole Rep. No. 12, *reprinted in* 1 *Proceedings of the Constitutional Convention of Hawai'i of 1978*, 1016 (1980) 21

Stand. Comm. Rep. No. 57, *reprinted in* 1 *Proceedings of the Constitutional Convention of Hawai'i of 1978*, 637 (1980) 22

TABLE OF AUTHORITIES – Continued

Page

HAWAII STATUTES

Section 298-2(b) 22

Section 368-3 1

Section 368-17(a) 1

Rev. L. Haw. § 211 (1905) 13

Rev. L. Haw. § 312 (1925) 17

HAWAII SESSION LAWS

1920 Haw. Sess. L. Act 30 17

1923 Haw. Sess. L. Act 171 17

1925 Haw. Sess. L. Act 152 17

1927 Haw. Sess. L. Act 102 17

1949 Haw. Sess. L. Act 227 18

RULES

Hawaii Administrative Rules

H.A.R. § 12-46-174 1

H.A.R. § 12-46-177 1

TABLE OF AUTHORITIES – Continued

Page

INTERNATIONAL LAW

International Convention on the Elimination of all Forms of Racial Discrimination, Oct. 21, 1994, art. 7, 660 U.N.T.S. 195, 212 27

U.N. Comm'n on Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted in Res. 1992/16, Feb. 21, 1992, reprinted in Report of the Working Groups on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN.4/1992/48, preamble and Corr.1, at 16-19 (1992) 27

U.N. Economic & Social Council, Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples, 46th Sess., U.N. Doc, E/CN.4/Sub.2/1994/Add.1 ..... 27, 28

LAW REVIEWS

Addeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 66 Notre Dame L. Rev. 1219 (1991) 5, 6

Robert A. Williams, Jr., *Documents of Barbarism: the contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law*, 31 Ariz. L. Rev. 237 (1989) 8

MISCELLANEOUS

1 *International Encyclopedia of Linguistics* 183 (William Bright ed. 1992) 23

3 *International Encyclopedia of Linguistics* 358 (William Bright ed. 1992) 24

TABLE OF AUTHORITIES – Continued

Page

Alu Like, Inc., *A Native Hawaiian Profile* 1 (1981) 19

Nancy F. Conklin and Margaret A. Lourie, *A Host of Tongues: Language Communities in the United States* (1983) 24

James Crawford, *Hold Your Tongue: Bilingualism and Politics of English Only* (Addison-Wesley Publishing Co., 1992) 7

Bill M. Donovan, *Introduction to Bartolomé de las Casas, The Devastation of the Indies, A Brief Account* (Herma Briffault trans., 3rd ed. 1992) 10

Cecil K. Dotts and Mildred Sikkema, *Challenging the Status Quo: Public Education in Hawai'i 1840-1980,* Hawai'i Education Ass'n (1994) 18

Andy Hall, *"English' Advocate Assailed,* The Arizona Republic (Oct. 9, 1988) 7

Lewis Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* (1959) 9, 12

Shirley B. Heath, *A National Language Academy? Debate in the New Nation,* 11 *Int'l J. Soc. Language* 9 (1977) 24, 25

Bernhard Hormann, *Speech, Prejudice, and the School in Hawai'i,* Social Process (1947) 18

Bruce E. Johansen, *Forgotten Founders* (1982) 23, 24

Larry K. Kimura & William Wilson, Native Hawaiian Study Commission Minority Report, Vol. I: 173-203, U.S. Department of the Interior, Washington D.C. (1983) 12, 14, 19, 20, 22

Osmos Lanier, Jr., "Anti-Annexationists of the 1890's" (Ph.D. thesis, University of Georgia) ... 15, 16

TABLE OF AUTHORITIES – Continued

Page

John Maher and Kyoko Yashiro, *Multilingual Japan,* (1995) 23

Albert Memmi, *Dominated Man: Notes Toward a Portrait* (1968) 8, 9, 15, 16

Albert Memmi, *The Colonizer and the Colonized* (1965) 8

Franklin Odo and Kazuko Sinoto, *A Pictorial History of the Japanese In Hawaii: 1885-1924* 127-128 Bishop Museum Press (1985) 17

Thomas J. Osborne, *Empire Can Wait: American Opposition to Hawaiian Annexation, 1893-1898* (1981) 16

E. B. Reuter, ed., *Race and Culture of the South Seas* (1935) 12

Suzanne Romaine, *Language in Society: An introduction to sociolinguistics* (1994) 24

Charlene J. Sato, *A Nonstandard Approach to Standard English,* 23 TESOL Quarterly 259 (1986) 26

Charlene J. Sato, *Language Change In a Creole Continuum: Decreolization?,* 10 U. Haw. Working Papers in ESL 127 (1991) 26

Carl O. Sauer, *Agricultural Origins and Dispersals* (1952) 9

Albert Schütz, *The Voices of Eden: A History of Hawaiian Language Studies* (1994) 18, 20

Bernard Sheehan, *Savagism & Civility: Indians and Englishmen in Colonial Virginia* (1980) 10

TABLE OF AUTHORITIES – Continued

Page

William A. Smalley, *Linguistic Diversity and National Unity, Language Ecology in Thailand* (1994) 23

Stanlaw and Inoue, 72 *Language* 441-42 (1996) 23

J. B. Trend, *The Civilization of Spain* (1944) 9

Benjamin O. Wist, *A Century of Public Education in Hawaii* (1940) 13

Report of the President of the Board of Education to the Hawaiian Legislature 11 (1884) 12

INTEREST OF AMICI CURIAE

The Hawai'i Civil Rights Commission is a state agency with jurisdiction to enforce Hawai'i's discrimination laws in employment, housing, and public accommodations.[1] Haw. Rev. Stat. § 368-3 (1993). Hawai'i's Constitution expressly prohibits discrimination in the exercise of a person's civil rights because of race and ancestry (national origin). Haw. Const., art. I, § 5 (1978). Race and ancestry (national origin) are protected bases in the three laws enforced by the Commission.

As provided in the Commission's rules, all employers are prohibited from imposing English only rules *at all times* in the workplace, from inquiring about a job applicant's primary language, and from discriminating based upon an individual's accent or dialect. Haw. Admin. R. ("H.A.R.") §§ 12-46-174 and 177 (1991). The Commission considers limitations against the use of any language other than English in the public or private work setting to constitute employment discrimination on the basis of ancestry (national origin), unless justified by a business necessity. H.A.R. § 12-46-174 (1991). For this reason, the Commission seeks to participate as an Amicus Curiae in the instant case.

The Native Hawaiian Legal Corporation (NHLC) is a non-profit, public interest law firm incorporated in 1974

---

[1] The Commission is authorized to accept the investigate complaints of discrimination, determine if there is reasonable cause to believe that discrimination occurred, and adjudicate cases where reasonable cause is found. Haw. Rev. Stat. § 368-3 (1993). The Commission can award compensatory and punitive damages and other relief if it determines that the law has been violated. Haw. Rev. Stat. § 368-17(a) (1993).

to assert, protect and defend Hawaiian land, water and traditional/customary rights. NHLC has represented native Hawaiians in quiet title and partition cases, access, gathering and water, and protecting two federally-mandated land trusts for the betterment of native Hawaiians, the Hawaiian Home Lands Trust, and the Ceded Lands Trust. NHLC's interest in filing as amicus curiae in this case is to ensure that the free use and exercise of Hawaiian, the State's only indigenous native language, is not constitutionally abridged nor impaired by any ruling issued by this Court.

Nā Loio No Nā Kānaka (Hawaiian for "the lawyers for the people") is a non-profit, public interest law firm founded in 1983 to provide legal services to indigent immigrants in deportation, exclusion, amnesty and political asylum cases. Nā Loio attorneys also litigate select civil rights cases, several of which have involved language and national origin discrimination issues. Nā Loio's interest in filing as amicus curiae in this case is to ensure that access to state services for non-English and limited-English speakers in Hawai'i will not be impaired.

The Native Hawaiian Advisory Council (NHAC) is a non-profit organization committed to legislative, administrative and judicial advocacy of Native Hawaiian rights. In particular, NHAC focuses on the development and protection of Native Hawaiian cultural rights, with an emphasis on water, gathering and language rights. NHAC receives funding from the Adminstration for Native Americans and a variety of foundations and other private sources.

Amici seek to support the arguments made in Respondents' brief. Each of the Amici has an interest in

the treatment of Hawaiian and other indigenous languages, as well as immigrant community languages. Amici can provide information about Hawai'i's historical experience with language policy, which will assist this Court in the consideration and disposition of the issues raised in this case. Pursuant to Supreme Court Rule 37.3, written consent to file this Amici Curiae has been obtained from Petitioners and Respondent Yniguez. Amici have not received written consent from the other Respondents but believe that they will not object to the filing of this Brief of Amici.

SUMMARY OF ARGUMENT

Contrary to petitioner's assertions, the controversy over Article 28, Arizona's English Only amendment, is not about national unity versus balkanization. Nor is it about the encouragement of immigrant assimilation versus cultural group separatism. These descriptions conceal the ill-will of many English Only supporters toward immigrant-racial minorities and further mislead persons of good will about the amendment's consequences.

Arizona's English Only amendment is about negation and exclusion. It is designed to achieve a false sense of unity through an apparently homogeneous polity by rendering invisible those who do not look and talk like "Americans." If enforced, the amendment would destroy many immigrant group members' ability to function in day-to-day interactions with government and to participate meaningfully in political life. Moreover, the amendment will, for many, eviscerate their cultural groups and

deprive immigrants of the cultural base of identity and support needed to cope with continuing mainstream racism and nativism. Maintenance of this transitional base is necessary for such groups to survive in and adapt to American society.

The foregoing claims are more than mere contentions. They are supported by relevant history – e.g., by the racist underpinnings and horrendous cultural consequences resulting from the overthrow of Hawai'i's constitutional monarchy and the Hawai'i territorial government's efforts to extirpate the indigenous Hawaiian language to establish English as the "standard" language for multiracial, multilingual Hawai'i. Amici will undertake a historical-legal analysis to provide a framework for understanding Arizona's English Only amendment and the movement that gives rise to it. This analysis will proceed in three parts. First, Amici will show that English Only in Hawai'i meant more than the suppression of Hawaiian and other non-English languages. Although cast in terms of assimilation and societal unity, the Hawaiian language prohibition was part of a larger racist strategy to negate nonwhite racial and cultural groups – i.e., to form a "unified" polity by negating those deemed unfit to be a part of it. Second, Amici will show that banning the Hawaiian language did not result in the assimilation of Hawaiians but nearly destroyed their culture, as well as their physical and spiritual health while effectively excluding them from the United States polity. This cultural destruction contributed to the socio-economic subordination of Hawaiians. It also bred anger, resentment and political resistance. That resistance over nearly a century fueled a resurgence of the Hawaiian language. Finally, Amici will offer a general account of

how the resurgence of the Hawaiian language particularly and multilingualism generally are beneficial to a multicultural democracy.

In short, Amici suggest that, contrary to petitioners' assertions, the proper description of this English Only controversy is negation/exclusion versus multicultural democracy.

ARGUMENT[2]

I. PETITIONER HAS IMPROPERLY CHARACTERIZED THE ARTICLE 28 ENGLISH ONLY CONTROVERSY AS UNITY VERSUS BALKANIZATION; RATHER, THE PROPER DESCRIPTION IS CULTURAL/RACIAL NEGATION VERSUS MULTICULTURAL DEMOCRACY.

The stakes in the English Only controversy extend far beyond language choice. They extend beyond access to government services for immigrant groups. They extend beyond simple personal prejudice against nonwhite immigrants. Arizona's English Only amendment is about cultural/racial negation[3] – fostering a false societal unity

---

[2] Amici gratefully acknowledge the research work of Michael L. Forman, Ph.D. Chair, Linguistics Department, University of Hawai'i at Mānoa, David Forman, member, Hawai'i Advisory Committee, U.S. Commission on Civil Rights, and law students Jason Shimizu, Susan Serrano, Gay Tanaka and Taryn Tomasa.

[3] Addeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 66 Notre Dame L. Rev. 1219 (1991). According to Addis, the dominant majority views its own experience and cultural understandings a the societal norm. *Id.*

premised on the disparagement and exclusion of those perceived as unfit to participate in the polity.[4] Notwithstanding contrary suggestions by some of the amendment's

---

at 1223. Any group that does not conform that "universal individual" becomes "Other." *Id*. Societies react to the presence of minorities or "Others" within their borders in one of three ways, assimilation, paternalistic pluralism, or negation.

According to the concept of assimilation, the majority sees minorities and their cultures as poor imitations or extensions of the majority culture. *Id*. at 1224. Minorities are required to learn the language of the majority and to follow its cultural and social practices. *Id*. at 1223. Paternalistic pluralism seeks to "protect" minority cultures, but retains that sense of "Other." *Id*. at 1224. Such paternalism is a kind of negation because it assumes that the "Other" is not capable of constructive dialogue and has nothing to contribute to the majority.

Negation exists when the dominant majority sees minority cultures as the negative of itself. *Id*. at 1223. This "Other" has no humanity and is undeserving of participation in the polity. *Id*. at 1224. According to Addis, when negation is the social policy, the dominant majority's options are to totally annihilate the "Other," or to remove it from the environment, such as excluding a group from the political unit. *Id*. at 1223. In addition, negation can also include action taken against a minority group that has the effect of destroying its culture. Eliminating the culture of a minority is to destroy the framework within which a range of choices of group members can be considered and evaluated. *Id*. at 1249, 1262. Language is inseparable from culture for it is language that gives structure and meaning to cultural activities. *Id*. at 1270. "In this sense, to destroy the language of a group is to destroy its culture." *Id*.

[4] For example, memoranda by John Tanton, co-founder and chairman of U.S. English and principal proponent of the English Only movement, reveal the racialized motivation to negate and exclude racial/cultural groups from the polity.

> "The demographic picture in South Africa now is startling similar to what we'll see in California in 2030 . . . A non-white majority has poor education, jobs and income, owns little property, is on its way to political power and speaks a different language."

Andy Hall, *'English' Advocate Assailed*, The Arizona Republic (Oct. 9, 1988) quoting a memorandum from John Tanton, Chairman of U.S. English (1986).

> "Will the present majority peaceably hand over its political power to a group that is simply more fertile? . . . How will we make a transition from a dominant non-Hispanic society with a Spanish influence to a dominant Spanish society with a non-hispanic influence?"

James Crawford, *Hold Your Tongue: Bilingualism and Politics of English Only* 151 (Addison-Wesley Publishing Co., 1992), quoting, John Tanton, "Memorandum to WITAN IV."

proponents, the lessons of history indicate that the English Only amendment will not foster unity but will instead exclude these groups and engender strong, enduring resistance.

Arizona's English Only amendment and others like it[5] replicate a historical pattern of negation and racial/cultural aggression by dominant powers in their attempt to shape and control the social polity. Article 28 is part

---

[5] As set forth in the Ninth Circuit's opinion, seventeen other states have adopted "official-English" provisions: Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawai'i, Illinois, Indiana, Kentucky, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, Tennessee, and Virginia. *Yniguez v. Arizonans For Official English*, 69 F.3d 920, 927 n.11 (9th Cir. 1995).

As the Ninth Cir. recognized, *Yniguez* does not apply directly to Hawai'i's language situation. English is a co-official language with Hawaiian. *See*, Section III B, *infra*.

of a pattern of racial and cultural aggression, which is revealed by comparing it to past English Only laws in Hawai'i and by analyzing its provisions and effects within a framework developed by Albert Memmi, a scholar and resister against French colonialism. Memmi identified four related strategies by which dominant, European-derived cultures historically upheld and legitimated their harsh exercises of power over nonwhite racial and cultural groups.[6] Those strategies, which collectively define racist/cultural aggression, are:

1) Stressing the *real or imaginary differences* between the racist and its victim.

2) *Assigning values* to those differences, to the advantage of the racist and the detriment of its victim.

3) Trying to *make them absolutes by generalizing* from them and claiming that they are final.

4) *Justifying* any present or possible *aggression or privilege.*[7]

Memmi's framework focuses on the dominant group's identification of a specific aspect or trait of culture (e.g. language) as a source of social difference. That difference is then given value, with the dominant group's social trait

---

[6] Albert Memmi, Attempt at a Definition, in *Dominated Man: Notes Toward a Portrait* 186 (1968) (hereinafter "Definition"); *See also,* Albert Memmi, *The Colonizer and the Colonized* (1965).

[7] Memmi, Definition, *supra* note 6 at 186. *See also* Robert A. Williams, Jr., *Documents of Barbarism: the contemporary Legacy of European Racism and Colonialism in the Narrative Traditions of Federal Indian Law,* 31 Ariz. L. Rev. 237, 262 (1989) (describing and applying Memmi's framework to Native American law).

valued highly and the subordinated group's trait denigrated. The positive and negative value of differences concerning the one trait are then generalized to differences between dominant and subordinate groups. This differentiation and denigration of the subordinated group then legitimates discriminatory and destructive actions taken against the group. Memmi summarized the collective operation of the four strategies in the following fashion: "Racism is the generalized and final assigning of values to real or imaginary differences, to the accuser's benefit and at his victim's expense, in order to justify the former's own privileges or aggression."[8] In the instant case, the "privilege" is control of the polity and all the benefits resulting from such control. The key strategy for maintaining this privilege is control over language, which provides access to the polity.

Scholar Antonio de Nebrija presented the Gramática (the first written grammar of a modern European language) to Queen Isabella of Spain in 1492. When the Queen asked about its purpose, the Bishop of Avila replied on behalf of Nebrija, (who had written in his introduction) "siempre la lingua ha sido compañera del imperio"), "[y]our majesty, language is the perfect instrument of empire."[9] Amicus Human Rights Watch aptly

---

[8] Memmi, Definition, *supra* note 6, at 185.

[9] J. B. Trend, *The Civilization of Spain* 88 (1944), *quoted in* Lewis Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* 8 and n. 31 (1959). The racist pattern of denigration described by Memmi can also be detected in the history of the sixteenth century. "[A]s 'civilized' persons have done around the world, . . . [Spaniards] unhesitatingly condemned the unfamiliar culture pattern and proceeded to break it down." Hanke, at 51-52 (citing Carl O. Sauer,

describes the numerous efforts of dominant groups around the world to destroy nondominant language use as a means of controlling politics and the economy of a country or region.[10]

Amici assert that the national English Only movement, of which Arizona's Article 28 is an integral part, reflects an effort to deploy the concept of "unity" to control who participates in the politics and economy of

---

Agricultural Origins and Dispersals 42-43 (1952)). Hanke's essay examines the bitter dispute between Bartolomé de las Casas and Juan Ginés de Sepúlveda at the royal capitol of Valladolid in 1550 concerning the question whether the Spanish conquest of American Indians was morally justifiable. Sepúlveda argued in the affirmative, relying primarily upon the Aristotelian concept of natural slavery. De las Casas vehemently defended the Indians' rights. The ecclesiastical judges failed to reach a collective decision and "[t]he facts now available do not support conclusively the victory of either contestant." *Id.* at 74.

"Although the English generally disassociated themselves from Spanish brutality, they obtained their first insights into the native societies from Spanish sources." Bernard Sheehan, *Savagism & Civility; Indians and Englishmen in Colonial Virginia* 6 (1980). "[G]roups such as the Puritans never truly questioned the basic character of European/Indian relations. In the European invasion of North America, native peoples became defined as fundamentally alien, unworthy of any genuine effort to either appreciate their culture or incorporate it at the most peripheral edge of Western society." Bill M. Donovan, *Introduction to Bartolomé de las Casas, The Devastation of the Indies, A Brief Account* 23 (Herma Briffault trans., 3rd ed. 1992).

[10] *See* Amicus Brief for Human Rights Watch at 5, *Arizonans for Official English v. State of Arizona*, Dkt. No. 95-974 ("Rather than reflecting a constructive attempt to build national unity, laws restricting the use of minority languages usually represent one facet of a larger effort to marginalize, persecute or forcefully assimilate disfavored ethnic and cultural minorities").

our country. This brief makes this point through historical-legal discussion, employing Memmi's strategies of racism and describing the United States government's support of white oligarchical control over the politics, economy and social life of Hawai'i, in part, through the destruction of indigenous language and culture. The brief also describes how dominant efforts at racial/cultural group negation, far from achieving even a limited "unity," bred strong opposition and resistance and how evidence of the resurgence of Hawaiian language is highly salutary. As will be discussed in Section IV, *infra*, the most appropriate characterization of the English Only controversy is "negation/exclusion" versus multicultural democracy.

II. FALSELY CAST IN TERMS OF ASSIMILATION AND SOCIETAL UNITY, EARLY EXCLUSIONARY LANGUAGE POLICY IN HAWAI'I REFLECTED DIFFERENTIATION AND DENIGRATION OF HAWAIIAN CULTURE AS A MEANS FOR EXCLUDING HAWAIIANS FROM THE POLITY

A. Post-Western Contact Through the Overthrow of the Hawaiian Constitutional Monarchy (1776-1893): Cultural Disfavor

Negative attitudes towards the use of Hawaiian language began as early as 1820, when Calvinist missionaries from New England introduced the Latin alphabet to the Hawaiian people. Missionaries chose to separate themselves from the Hawaiian language and culture.[11]

---

[11] "The early missionaries to [Hawai'i] wondered whether the natives there were men or 'a link in creation connecting men

Stressing the differences between their cultures, the missionaries refused to allow their children to learn Hawaiian, maintained their own schools and even punished members for marrying into Hawaiian families.[12]

Missionaries also encouraged the demise of Hawaiian language after leaving the church to work for the Hawaiian government.[13] Richard Armstrong, a former missionary who later served as Minister of Public Instruction for the Kingdom of Hawai'i, strongly advocated an "English-mainly" strategy (later to become English Only).[14] Advocacy by Armstrong and his successors in the Department of Education resulted in the loss of public financial support for Hawaiian schools. Appropriations to English schools, as well as teacher salaries were considerably higher than for their Hawaiian counterparts.[15] The President of the Board of Education sought to justify the privileged treatment of English in his 1884 report to the Hawaiian legislature: "Why worry over the quality of teachers in Hawaiian? We shan't need them much longer, anyway."[16]

---

with brutes'." Hanke, *supra* note 9, at 101 (citing E. B. Reuter, ed., *Race and Culture of the South Seas* 171 (1935)).

[12] Larry K. Kimura and William Wilson, Native Hawaiian Study Commission Minority Report, Vol. I: 173-203, 192, U.S. Department of the Interior, Washington D.C. (1983)

[13] *Id.* at 192.

[14] *Id.* at 193.

[15] Kimura and Wilson, *supra*, note 12 at 194.

[16] *Report of the President of the Board of Education to the Hawaiian Legislature* 11 (1884).

English Only advocates also justified their fiscal neglect of Hawaiian schools by citing its deficiencies: "Very little had been attempted before 1870 toward curriculum reconstruction. Retarding influences lay in the use of the Hawaiian language with its lack of extensive literature, in the inadequate facilities for the training of teachers, and in the almost universal faith in the three R's."[17] This statement, of course, ignores the reality that declining public funding, rather than inherent educational inferiority, contributed to declining quality.

B. Between the Overthrow and Statehood (1893-1959): Cultural Negation

After the overthrow of the Hawaiian constitutional monarchy in 1893, and while the United States debated annexation of Hawai'i, Americans in Hawai'i acted directly to suppress the Hawaiian language. In 1896, the newly created Republic of Hawai'i enacted a law which rendered illegal the use of Hawaiian in public and private schools. The law provided that "[t]he English language shall be the medium and basis of instruction in all public and private schools. . . . Any schools that shall not conform to the provisions of this section shall not be recognized by the department."[18]

By law, Hawaiian was strictly forbidden anywhere within school yards or buildings; the physical punishment

---

[17] Benjamin O. Wist, *A Century of Public Education in Hawaii* 135 (1940).

[18] Rev. L. Haw. §211, at 156 (1905).

for violating this prohibition was harsh.[19] Native speaking teachers were threatened with dismissal; some were sent to Hawaiian-speaking homes to reprimand parents for speaking Hawaiian to their children.[20] The Territorial Department of Education and the Territorial Governor, appointed by the United States President, approved these actions.

What drove the coordinated legal and bureaucratic push to eliminate the Hawaiian language from school, public places and homes? Some offered an explanation of assimilation – to bring Hawaiians into the American fold. Other explanations, however, are more resonant – given the impending annexation by the United States, the small yet dominant white American population in Hawaíi and the struggle for control over 1.7 million acres of militarily and agriculturally valuable Hawaiian land.

The debates concerning the United States annexation of Hawai'i at the time of the banning of Hawaiian language reveal a racial/cultural explanation consistent with the sociology observation that "to destroy the language of a group is to destroy its culture."[21] Those debates illustrate the intensity of racial and cultural aggression and the desire of Americans in Hawai'i and the United States to negate Hawaiians as a racial/cultural group. Congressional debates characterized Hawaiians as uncivilized, loathsome heathens. Congressman Clark of Missouri suggested that annexation of Hawai'i would mean that the Speaker of the House might one day have to recognize

---

[19] Kimura and Wilson, *supra* note 12, at 196.

[20] *Id.* at 196.

[21] Addis, *supra* note 3, at 1270.

" 'the gentleman from the Cannibal Islands,' who will gaze upon you with watering mouth and gleaming teeth."[22] Clark added, "How can we endure our shame when a Chinese Senator from Hawai'i with his pigtails . . . his pagan joss in hand, shall rise from his chair in pigeon [sic] English [and] proceed[ ] to chop logic with . . . Henry Cabot Lodge?"[23] Other congressional depictions of Hawaiians starkly illustrate the strategies of racist aggression identified by Memmi.

> Side by side on their islands were two civilizations, higher and a lower civilization. On the side of the higher civilizations were ranged the intelligence, the progress, the thrift, the aspirations for enlarged liberty and for the legalization of a great destiny for Hawai'i. On the other side was ranged the monarchy, with its narrow, contracted view of human rights, with its semibarbarous face turned toward the past, unwilling to greet the dawning sun . . . From the very nature of things these two civilizations could not exist together forever. One was to survive and the other would have to perish.[24]

These depictions, using Memmi's analysis, first identified differences between Americans and Hawaiians, then assigned values to those differences (higher civilization, intelligence, progress, thrift, liberty; lower civilization, narrow view of rights, semibarbarous face) and finally generalized from them in order to justify the United States'

---

[22] Osmos Lanier, Jr., "Anti-Annexationists of the 1890's" 57 (Ph.D. thesis, University of Georgia) (microfilmed by University Microfilms International, Ann Arbor, Michigan, 1966).

[23] *Id.*

[24] 53 Cong. Rec. 1885 (1894).

aggression over the former Hawaiian nation (survival of Americans and demise of Hawaiians) and its privilege (control over valuable military and agricultural lands).

Popular discourse of the time also treated Hawaiians as unworthy of participation in the American polity. American commentators thus cast Pacific islanders as inferior to Anglo-Saxons and referred to them generically as "dark-skinned 'mongrel[s]' . . . not suitable for American citizenship."[25] While some asserted Hawaiians' physical inferiorities, others implied that there were inherent limitations of the ability of Hawaiian citizens to govern themselves. Some considered the Hawaiian population to be a "hot bed of corruption"[26] threatening to further complicate America's racial problems. American press referred to Queen Lili'uokalani as "a disreputable hag who is the head voodoo priestess of Hawai'i[27]

Annexation thus posed a dilemma for the United States. It meant enhanced American political, military and economic interests. But it also potentially meant inclusion of "inferior, semi-barbarious, corrupt, threatening" Hawaiians in the American polity. The solution: annexation with an implicit promise of the "demise" of Hawaiians as a racial/cultural group. One important instrument of demise: language – "to destroy the language of a group is to destroy its culture." In

---

[25] Thomas J. Osborne, *Empire Can Wait: American Opposition to Hawaiian Annexation, 1893-1898* 36 (1981).

[26] *Id.*

[27] Lanier, *supra* note 21, at 16. (quoting the Memphis Commercial-Appeal, February 22, 1893 at 4). Lili'uokalani was also referred to as "the tar-baby queen[.]" *Id.* at 31 (quoting the Atlanta Constitution, February 3, 1894, at 1).

the context of these annexation debates, the banning of the Hawaiian language thus reflected one aspect of a larger drive toward the "demise" or negation of Hawaiians as a racial/cultural group.

Similarly, fearing the increasing "sinister" power of the "unassimilable" Japanese in Hawai'i, the white business-government oligarchy targeted elimination of the Japanese language as a means for controlling Japanese culture (folklore, dance, religion, ethics).[28] That effort, and the English Only laws it spawned,[29] failed in the United States Supreme Court.[30]

---

[28] Franklin Odo and Kazuko Sinoto, *A Pictorial History of the Japanese in Hawaii: 1885-1924* 127-128 Bishop Museum Press (1985).

[29] *See, e.g.*, 1920 Haw. Sess. L. Act 30 (requiring foreign language school teachers to obtain teaching permits demonstrating knowledge of American language, history and democracy, and mandating that they pledge not to teach anything that contradicted American ideals or institutions); 1923 Haw. Sess. L. Act 171 (prescribing subjects, courses, qualifications for entrants, attendance requirements, and assessed fees on these schools); 1925 Haw. Sess. L. Act 152 (prohibiting foreign language schools from filing petitions against government regulations).

[30] *Farrington v. Tokushige*, 273 U.S. 284, 299 (1927). When efforts to impose English Only failed, the government decided to provide more benefits to English schools. The Department of Public Instruction (hereinafter "DPI") enacted a policy of creating more English Standard Schools and English sections in areas without such schools. *See, e.g.*, 1927 Haw. Sess. L. Act 102 (substituting the phrase "standard schools" for "select schools" in Rev. L. Haw. § 312 (1925); the original legislation, which was enacted in 1896, gave the DPI discretion to establish, maintain and discontinue select schools taught in the English language for Hawaiian royalty). By 1937, there were ten such schools

III. THE CULTURAL DESTRUCTION ACCOMPANYING HAWAI'I'S ENGLISH ONLY LANGUAGE POLICY CONTRIBUTED TO THE SUBORDINATION OF HAWAIIANS, BRED LONG-TERM POLITICAL RESISTANCE WHICH ULTIMATELY FOSTERED OFFICIAL MULTILINGUALISM.

A. The Impact of Restrictive Language Policies.

As a direct result of the 1896 law prohibiting the use of Hawaiian in public and private schools and its accompanying government educational policies, the number of schools conducted in Hawaiian dropped from 150 in 1880 to zero in 1902.[31] The aggressive stance taken by English Only advocates left only remanents of the Hawaiian speaking community.[32] The language has a single native-speaking community

---

dominated by caucasians. The legislature did not resolve to eliminate these symbols of "Caucasian snobbishness" until 1949. Bernhard Hormann, *Speech, Prejudice, and the School in Hawai'i*, 11 Social Process 74, 79 (1947); 1949 Haw. Sess. L. Act 227. The schools were not completely phased out until 1961. Cecil K. Dotts and Mildred Sikkema, *Challenging the Status Quo: Public Education in Hawai'i 1840-1980* 104 Hawai'i Education Ass'n (1994).

[31] Albert J. Schütz, *The Voices of Eden: A History of Hawaiian Language Studies* 352 (1994).

[32] Because Hawaiian was no longer the medium of instruction in the school system, many children who speak Hawaiian as their native language found fewer opportunities to use Hawaiian outside the home. The average age of native speakers of Hawaiian rose. Newspapers, which were the primary medium for communication in Hawaiian at that time, declined from a total of twelve newspapers (nine secular and three religious) in 1910 to one religious newspaper in 1948. When radio and television replaced the newspaper as the medium of communication, no Hawaiian programs were started. Schütz, *supra* note 29, at 362-363.

of some 150 individuals located on a private island, Ni'ihau.[33] And until recently, when a state-sponsored Hawaiian language immersion program started, there were less than 2,000 fluent native speakers – all of whom are above the age of sixty and are scattered throughout the remaining Hawaiian Islands.[34]

The destruction of Hawaiian culture, including the banning of Hawaiian language, is revealed in statistics concerning current socio-economic status of Hawaiians. In the 1980s, "of the 63,000 Hawaiian adult workforce approximately 10% were unemployed . . . nearly DOUBLE the State level; this ratio of unemployment for Hawaiians has not changed significantly since then."[35] Thirty-five percent of Hawaiian households have inadequate income; 15.1 percent are living below the poverty line (compared to 7.8% of total families in the State).[36] The life span of Hawaiians is nearly seven years less than that of the total population of the State.[37] Over 75 percent of the learning disabled youths in the public schools are Hawaiian (although Hawaiians comprise less than twenty

---

[33] Kimura and Wilson, *supra* note 12, at 191.

[34] *Id.*

[35] Alu Like, Inc., *A Native Hawaiian Profile* 1 (1981). Moreover, the majority of the Hawaiian adult workforce was employed in entry level positions while relatively few Hawaiians found themselves in the professional fields. *Id.*

[36] *Id.*

[37] *Id.* Hawaiians had the highest incidence of chronic heart trouble and diabetes in the State. *Id.*

percent of the state population).[38] Finally, sixty-six percent of the youths in correctional institutions are Hawaiian.[39]

B. Resistance and Reemergence

Similar to the resistance by Hawai'i Japanese to the closure of Japanese language schools, some Hawaiians chose to resist English Only. In the 1930s, native speakers organized a Hawaiian language school and a Hawaiian Language League (similar to the Gaelic League).[40] Others later created the Lalani Hawaiian Village to teach Hawaiian language and culture.[41] The Hawaiian churches resisted English Only services for over a half a century.[42]

Despite this resistance, by the 1960s, at the time of greatest Hawaiian socio-economic suffering, Hawaiian language and culture appeared to be on the brink of complete demise.[43] In the 1970s, however, long simmering Hawaiian anger and frustration, spurred by the black power and other ethnic movements, erupted in three forms. One form was political resistance to land development in the state – to the business-as-usual mindset that

---

[38] *Id.*

[39] *Id.*

[40] Kimura & Wilson, *supra* note 12, at 197.

[41] *Id.* at 197. The Ulu Mau Village, a similar effort in the 1960's, also met with an early demise. *Id.*

[42] *Id.* at 196. Nevertheless, by the 1960's, many of the services conducted in Hawaiian were replaced with English because most of the native-speaking Hawaiian ministers had died.

[43] Schütz, *supra* note 29, at 356-361.

desecrated Hawaiian lands and lifestyles. The second was Hawaiian legal claims to governmental reparations and political and cultural self-determination. The third form, supportive of the first two, was a Hawaiian cultural renaissance. Integral to that renaissance was the transformation of resistance against English Only to the birth of official multilingualism.[44]

In 1978, the people of Hawai'i added a new section to the Hawai'i Constitution affirming Hawaiian as a co-official language with English. Hawai'i thereby became an official multilingual state.[45] Another constitutional amendment mandated the state to "promote the study of Hawaiian culture, history and language . . . [and] provide for a Hawaiian education program consisting of language, culture and history in the public schools."[46] The amendment's purpose is:

> to recognize and preserve the Hawaiian culture which has contributed to, and in many ways forms the basis and foundation of, modern Hawaii, *and to revive the Hawaiian language, which*

---

[44] *Id.* at 361.

[45] Article XIV, Section 4 of the Hawai'i Constitution provides that "English and Hawaiian shall be the official languages of the state, except that Hawaiian shall be required for official public acts and transactions only as provided by law." The constitutional convention's delegates added this provision because they "[w]anted to overcome certain insults of the past where the speaking of Hawaiian was forbidden in the public school system, and of today[,] where Hawaiian is listed as a foreign language in the language department at the University of Hawaii." Committee of the Whole Rep. No. 12 *reprinted in* 1 *Proceedings of the Constitutional Convention of Hawai'i of 1978*, 1016 (1980).

[46] Haw. Const. art. X, § 4 (1978).

is essential to the preservation and perpetuation of Hawaiian culture.[47]

As a result of political resistance, the self-determination movement and the cultural renaissance, Hawai'i has witnessed the rebirth of the Hawaiian language.[48] In 1986, ninety years after Hawaiian was outlawed from public schools of Hawai'i, the State legislature amended the official "English only" law in public schools to implement Hawai'i's official multilingual policy by authorizing the Board of Education to provide for "special projects using the Hawaiian language."[49] In response, in 1987, the Board created Papahana Kaiapuni Hawai'i, or the Hawaiian Language Immersion Program, to help revitalize the language starting with kindergarten youths.[50]

---

[47] Stand. Comm. Rep. No. 57, *reprinted in* 1 *Proceedings of the Constitutional Convention of Hawai'i of 1978*, 637 (1980). (emphasis added)

[48] Hawaiian language class enrollment at the University of Hawai'i has risen from a low of twenty-seven students in the 1961-62 school year to more than 1,200 students in 1996. Hawaiian language instructors have increased from one teacher in 1961 to twenty-three in 1993. There is now one Hawaiian language radio program one day a week for one hour, and one newscast in Hawaiian Monday through Friday. 'Ahahui 'Olelo Hawai'i, an organization created to promote the Hawaiian language, was created in the 1970's and is still operating today. Kimura and Wilson, *supra* note 12, at 197.

[49] Haw. Rev. Stat. § 298-2(b) (1993).

[50] This program has two major goals: to help restore and revitalize Hawaiian, which is in danger of being lost as the elder generation of native Hawaiian speakers die, and to develop proficiency in both Hawaiian and English.

IV. THE SOCIAL VALUE OF MULTILINGUALISM TO A MULTICULTURAL DEMOCRACY

Language is a social phenomenon that is shared in some sense by two or more individuals. Multilingualism is a common condition of humankind; in the world at large, many more people are multilingual than are monolingual.[51] Even where popular belief suggests a homogenous and monolingual nation, for example Japan, ongoing research demonstrates the presence of considerable, but overlooked, multilingualism.[52] The United States is no different.[53]

This nation's founders appreciated and respected the languages of native peoples. Benjamin Franklin, Thomas Jefferson, and George Washington collected Indian grammars.[54] Similarly, William Penn held a profound sense of

---

[51] 1 *International Encyclopedia of Linguistics* 183 (William Bright ed. 1992) ("most of the two hundred or so countries of the world use more than one language").

[52] Stanlaw and Inoue, 72 Language 441-42 (1996) (Reviewing John Maher and Kyoko Yashiro, eds. *Multilingual Japan*, (1995)); William A. Smalley, *Linguistic Diversity and National Unity, Language Ecology in Thailand* 1 (1994) ("Thailand is a country with eighty languages. . . . Yet Thailand gives outsiders and even many of its own people the impression of being almost monolingual.").

[53] We now know that different Native American groups experienced multilingualism in a variety of forms. Moreover, the people who came to America from the Old World spoke a variety of languages; some of them undoubtedly spoke more than one language.

[54] Bruce E. Johansen, *Forgotten Founders* 94 (1982). Franklin often affected Indian speech patterns in his writings. *Id.* at 88. Jefferson cited examples of Indian oratory to show that they

respect for the linguistic diversity found in Pennsylvania.[55] The country's founders rejected the idea of one "national" or "official" language, embracing instead the idea that civic discourse must be conducted using any and all languages that the people made part of their social life: the original idea of a multicultural democracy.[56] During the early formation of this multicultural democracy, multiple languages "played critical roles in the political and social life of the nation . . . [and] [c]ultural and ethnic pluralities abounded."[57] Foreign language societies offered cultural and social security to immigrants and churches provided services in different languages. Leaders recognized that "if a national government legally pressure[d] groups to abandon their native languages, the repression of these tongues and

---

were not mentally deficient. *Id.* at 96. Within three years of his arrival in America, Thomas Paine was sitting around a council fire with the Iroquois, having learned to speak enough of their language so that he did not require an interpreter. *Id.* at 116.

[55] *See* Nancy F. Conklin and Margaret A. Lourie, *A Host of Tongues: Language Communities in the United States* 194-95 (1983) (referring to the "Pennsylvania Dutch" or *Deutsch* in their own tongue); Suzanne Romaine, *Language in Society: An introduction to sociolinguistics* 48 (1994) (referring to Hasidic Jews); 3 *International Encyclopedia of Linguistics* 358 (William Bright ed. 1992) (mentioning Russian-speaking communities in the United States).

[56] *See generally* Shirley B. Heath, *A National Language Academy? Debate in the New Nation*, 11 Int'l J. Soc. Language 9, 38 (1977) ("Diversification in language choice, change, and use not only prevailed, but was purposefully left unrestrained by the national leaderships' repeated failure to provide a national language academy.").

[57] *Id.* at 12.

separate unities could provoke resistance."[58] Seeing the potential for the use of plural languages to legitimate the new government, these leaders recognized that "linguistic minorities would not become separate and distinct peoples within the nation, so long as no legal force proscribed the use of their languages."[59]

As in the past, multilingualism today develops from the confluence of economic necessity, personal choice, and institutional support.[60] It can be liberating, enriching and socially constructive. Charlene Sato, Ph.D., a Japanese American from Hawai'i, observed "[t]hroughout its history as a marker of ethnic (actually, non-white) identity during the plantation era and of working class identity subsequently, [Hawai'i Creole English or] HCE was heavily stigmatized. . . . Creole speakers have typically been ashamed of their speech, referring to it as 'broken' or 'bad' English, a bad habit that must be overcome in

---

[58] *Id.* at 13.

[59] *Id.* at 14 (citations omitted). *See also id.* at 33 (observing that Chief Justice John Marshall refused to have the Court endorse Noah Webster's 1828 dictionary; he reminded Webster that in America, individuals, not public bodies, made such choices).

[60] Over the last fifty years, the federal government has supported the learning of other languages "in the national interest" under a variety of programs beginning with the Army Language School activities of World War II and extending into postwar programs such as the National Defense Education Act of 1958. Pub. L. No. 85-864, 72 Stat. 1581 (1958), and the Foreign Language Assistance Act of 1988, Pub. L. No. 100-418, 102 Stat. 1476 (1988).

order to succeed in life."[61] Accordingly, Sato successfully practiced a "nonstandard approach to standard English."

> The "nonstandard" approach to the teaching of SESD advocated here takes as fundamental (a) the social and linguistic integrity of minority varieties of English, and therefore, (b) the need to design sociolinguistically appropriate pedagogy for speakers of such varieties. Rather than remediation of students' language and replacement of minority varieties with "proper" English, the teaching of SESD may prove more successful if systematically practiced as additive bialectalism.[62]

Rather than pursuing or endorsing English Only policies, the application of Sato's approach would be more consistent with the multicultural democratic principles that this nation was founded upon as well as the reality of multilingualism throughout the world.

V. RECOGNIZING AND PROMOTING DIVERSITY AND PLURALISM IS AN EMERGING TREND IN INTERNATIONAL LAW, PARTICULARLY WITH RESPECT TO THE PRESERVATION OF LANGUAGE AS A FOUNDATIONAL ELEMENT OF CULTURE.

Several United Nations conventions and declarations, both in place and in prepatory stages, set forth international norms preserving language as a foundational element of

---

[61] Charlene J. Sato, *Language Change In a Creole Continuum: Decreolization?*, 10 U. Haw. Working Papers in ESL 127, 137 (1991). *See infra* text accompanying notes 12-24.

[62] Charlene J. Sato, *A nonstandard approach to standard English*, 23 TESOL Quarterly 259, 276-77 (1986).

culture and political and social stability.[63] The Draft Declaration on the Rights of Indigenous Peoples, for example, affirms the right to maintain cultural identity, including the practice and revitalization of group customs and traditions.[64] According to this approach to indigenous rights, language is an integral part of cultural identity.

> Language embodies a series of unconscious but enduring cultural traits symbolized by words. [Language] is not only the expression of a particular community, but also the most important force making for the community's integration . . . In learning a language, a child acquires the basic cultural heritage of his people and his

---

[63] U.N. Comm'n on Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted in Res. 1992/16, Feb. 21, 1992, *reprinted in* Report of the Working Groups on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, U.N. Doc. E/CN.4/1992/48, preamble and Corr.1, at 16-19 (1992) ("the promotion and protection of the rights of persons belonging to national or ethnic religious and linguistic minorities contribute to the political and social stability of States in which they live" and the strengthening of friendship and cooperation among peoples). *See also* International Convention on the Elimination of all Forms of Racial Discrimination, Oct. 21, 1994, art. 7, 660 U.N.T.S. 195, 212; U.N. Economic & Social Council, Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples, 46th Sess., U.N. Doc. E/CN.4/Sub.2/1994/Add.1 (hereinafter "Draft Declaration") (recognizing the "diversity and richness of civilizations, which constitute the common heritage of humankind").

[64] Draft Declaration, *supra* note 61, arts. 8 and 12. *See also* International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

> times. Language gives him a particular mental set . . . and a general life style. Each language reflects a particular way of seeing things and the world. . . . It is thus being recognized that these languages are an integral part of the various cultures of the country.[65]

CONCLUSION

The controversy over Article 28, Arizona's English Only amendment, thus is not about national unity versus balkanization or the encouragement of immigrant assimilation versus cultural group separatism. The amendment is about racial/cultural negation. It is designed to achieve a false sense of unity by rendering invisible those who do not look and talk like "Americans." Contrary to petitioners' assertions, the proper characterization of this English Only controversy is negation/exclusion versus multicultural democracy. Amici urge that this Court reject negation/exclusion and endorse multicultural democracy

[65] Draft Declaration, *supra*, note 61 para. 2, 4-6 & 10.

by affirming the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

Counsel of Record:

* John H. Ishihara
Hawaii Civil Rights Commission
888 Mililani St., 2nd Floor
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636

* Paul F. N. Lucas
* Carl C. Christensen
Native Hawaiian Legal Corporation
1164 Bishop Street
Suite 1205
Honolulu, Hawai'i 96813
Telephone: (808) 521-2302

William D. Hoshijo
* Eric K. Yamamoto
Na Loio No Na Kanaka
810 N. Vineyard Boulevard
Honolulu, Hawai'i 96813
Telephone: (808) 847-8828

* Eric K. Yamamoto
Native Hawaiian Advisory Council
1088 Bishop Street
Suite 1204
Honolulu, Hawai'i 96813
Telephone: (808) 523-1445

Attorneys for Amici Curiae